



[Billing Code 4710-25]

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 123, 124, 125, 126, 127, 128, 129, and 130

Public Notice: [7927]

Export Control Reform Transition Plan

AGENCY: Department of State.

ACTION: Proposed Policy Statement, Request for Comments.

SUMMARY: As part of the President's export control reform initiative, the Directorate of Defense Trade Controls (DDTC) seeks public comment on the proposed implementation plan for defense articles and defense services that will transition from the jurisdiction of the Department of State to the Department of Commerce. The intent of this plan is to provide a clear description of DDTC's proposed policies and procedures for the transition of items to the jurisdiction of the Department of Commerce. The revisions to this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011. The Department of State's full plan can be accessed at

<http://www.state.gov/documents/organization/181028.pdf>.

DATES: The Department of State will accept comments on this proposed policy statement until [insert date 45 days from date of publication in the *Federal Register*].

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- E-mail: DDTCResponseTeam@state.gov with the subject line, "ECR Transition Guidance."
- Internet: At www.regulations.gov, search for this notice by using this notice's docket number, DOS-2012-0020.

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal e-mails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov*. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov*, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2792, or e-mail *DDTCResponseTeam@state.gov*. ATTN: ECR Transition Guidance.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The items subject to the jurisdiction of the ITAR, *i.e.*, “defense articles,” are identified on the ITAR’s U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (“EAR,” 15 CFR parts 730-774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce.

Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Transition Plan

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (see "Commerce Control List: Revising Descriptions of Items and Foreign Availability," 75 FR 76664 (December 9, 2010) and "Revision to the United States Munitions List," 75 FR 76935 (December 10, 2010)). Since that time, DDTC has published proposed revisions to several USML Categories, which, when implemented, will transition a significant number of items to the jurisdiction of the Department of Commerce.

Because an immediate effective date would impose undue compliance burden on the defense industry, DDTC has developed the following phased implementation plan for items that will transition from the USML to the CCL, and will become effective for those items upon publication of each revised USML category. This phased implementation plan is designed to mitigate the impact on U.S. license holders, while assuring that all defense trade that should be licensed remains so. Under the plan U.S. license holders will continue to use their approved licenses at the time the transition takes place.

Licenses (DSP-5, DSP-61, and DSP-73)

Licenses for items transitioning to the CCL that are issued in the period prior to the date of final rule publication for each revised USML

category will remain valid until expired, returned by the license holder, a license amendment is required, or for a period of two years from the effective date, whichever occurs first. Any limitation, proviso or other requirement imposed on the DDTC authorization will remain in effect. The Department of Commerce may be consulted regarding the applicability of the EAR to the subject commodity.

License applications for items transitioning to the CCL that are received by DDTC prior to final rule publication for each revised USML category will be adjudicated up until the effective date of the rule, unless the applicant requests that the application be Returned Without Action.

License applications received by DDTC within the 45 days following the final rule's publication, but before the rule becomes effective, will be adjudicated only when the applicant provides a written statement certifying that the export or temporary import will be completed within 45 days after the effective date of the final rule. License applications that do not contain this certification will be Returned Without Action. The validity period for licenses issued in this timeframe will be limited to the date 45 days after the effective date of the final rule.

License amendment requests (*i.e.*, DSP-6, DSP-62, and DSP-74) received by DDTC within the 45 days following the final rule's publication, but before the rule becomes effective, will be adjudicated only when the applicant provides a written statement certifying that the export or temporary import will be completed within 45 days after the effective date of the final rule. Amendment requests that do not contain this statement will be Returned Without Action. The validity period for amended licenses issued

in this timeframe will be limited to the date 45 days after the effective date of the final rule.

All license requests, including amendments, received after the effective date for items that have transitioned to the CCL will be Returned Without Action with instructions to contact the Department of Commerce. Technical Assistance Agreements, Manufacturing License Agreements, and Warehouse and Distribution Agreements

Agreements approved prior to the date of relevant final rule publication will remain valid until expired, unless they require an amendment, or for a period of two years from the effective date of the transition, whichever occurs first. Any activity conducted under an agreement will remain subject to all limitations, provisos and other requirements stipulated in the agreement.

Agreement amendments that incorporate items moving to the CCL prior to the date of publication of the final rule will remain valid until expired or for a period of two years from the effective date of the transition, whichever occurs first.

Agreements and amendments received after the final rule is published, but before it becomes effective, will be Returned Without Action if the agreement contains both USML and CCL items. The agreement holder will be required to amend the agreement to remove all CCL items. Any agreement in which all items are transitioning to the CCL must be terminated and the applicant must seek a new authorization from the Department of Commerce, as applicable.

Agreements and agreement amendments for items moving to the CCL which are received after the effective date will be Returned Without Action with instructions to contact the Department of Commerce.

Reporting Requirements

All reporting requirements for Manufacturing License Agreements under ITAR §124.9(a)(6) and Warehouse and Distribution Agreements under ITAR §124.14(c)(6) must be complied with and such reports must be submitted to the Department of State while the agreement is relied upon as an export authorization by the exporter.

Commodity Jurisdiction Determinations

Previously rendered commodity jurisdiction (CJ) determinations for items deemed to be USML, but that are subsequently transitioning to the CCL pursuant to a published final rule, will no longer be valid after the transition date. Exporters are encouraged to review each revised USML category along with its companion CCL category to determine whether their items have transitioned to the jurisdiction of the Department of Commerce. Consistent with the recordkeeping requirements of the ITAR and the EAR, licensees and foreign persons subject to licenses must maintain records reflecting their assessments of the proper regulatory jurisdiction over their items. Licensees who are unable to ascertain the proper jurisdiction of their items may request a CJ determination from DDTC through the current, established procedure.

Licensees who are certain their items have transitioned to the CCL are encouraged to review the appropriate Export Control Classification Number (ECCN) to determine the classification of their item. Licensees who are unsure of the proper ECCN designation may request a Commodity

Classification Automated Tracking System (CCATS) determination from the Department of Commerce through the current, established procedure. See 15 CFR §748.3.

Reexport/Retransfer of USML items that have transitioned to the CCL

Following the effective date of transition, foreign persons (*i.e.*, end-users, foreign consignees, and foreign intermediate consignees) who receive, via a Department of State authorization, an item that they are certain has transitioned to the CCL (*e.g.*, confirmed in writing by manufacturer or supplier), should treat the item as such and submit requests for post-transition reexports or retransfers to the Department of Commerce, as may be required by the EAR.

Foreign persons or U.S. persons abroad that have USML items in their inventory at the effective date of transition should review both the USML and the CCL to determine the proper jurisdiction. If doubt exists on jurisdiction of the items, the foreign person should contact the original exporter. If the item is clearly controlled by the Department of Commerce, any reexport or retransfer must comply with the requirements of the EAR.

Regulatory Oversight Responsibilities

For those items transitioning from the USML to the CCL, the Department of Commerce will exercise regulatory oversight, effective on the transition date, for the purposes of licensing and enforcement of exports from the United States where no Department of State authorization is being used. The Department of State will continue to exercise regulatory oversight concerning all Department of State licenses, agreements, and other authorizations, including those where exporters, temporary importers,

manufacturers, and brokers continue to use previously issued Department of State licenses and agreements after the effective date of the final rule.

License holders may decide to apply for and use Department of Commerce authorizations for export of the newly transitioned CCL items rather than continue to use previously issued Department of State authorizations. In such cases, license holders must return the Department of State licenses in accordance with ITAR §123.22, and obtain the required Department of Commerce authorizations.

Violations and Voluntary Disclosures of Possible Violations

Exporters, temporary importers, manufacturers, and brokers are cautioned to closely monitor ITAR and EAR compliance concerning Department of State licenses and agreements for items transitioning from the USML to the CCL.

On the effective date of each rule that adds an item to the CCL that was previously subject to the ITAR, that item will be subject to the EAR. Authorizations issued by DDTC before the transition date may continue to be used as described above by exporters, temporary importers, manufacturers, and brokers. The violation of a previously issued DDTC authorization (including any condition of a DDTC authorization) that is continued in use under the ITAR as described above is a violation of the ITAR.

With respect to a transitioned item, should a possible violation of the ITAR, the EAR, or any license or authorization issued thereunder be discovered, the person or persons involved are strongly encouraged to consult with DDTC or BIS as appropriate, to avail themselves of the current, established procedures for submitting voluntary disclosures and for

requesting specific authorization to take any further actions in connection with that item.

License holders and foreign persons must obtain Department of State authorization before disposing, reselling, transshipping, or otherwise transferring any item in their possession that remains on the USML.

Registration

Manufacturers, exporters, and brokers are required to register with the Department of State if their activities involve USML defense articles or defense services.

Registered manufacturers, exporters, temporary importers, defense service providers and brokers (“registrants”) are reminded of the requirement to notify DDTC in writing when they are no longer in the business of manufacturing, exporting, or brokering USML defense articles or defense services. Registrants who determine that all of their activities involve articles or services that will transition from the USML to the CCL and therefore are no longer required to register with the Department of State must provide such written notification. Instructions for providing such notification are accessible on the DDTC website (www.pmddtc.state.gov). Note that DDTC will not cancel or revoke those registrations, but will allow the registration to expire. Registrants who determine that all of their activities will be subject to Department of Commerce jurisdiction as a result of the transition from the USML to the CCL must nevertheless maintain registration with the Department of State until the effective date of the transition.

Registrants who determine they will no longer be required to register with the Department of State after the effective date of transition, and who

have registration renewal dates that occur after publication of the final rule but before its effective date, may request to have their registration expiration date extended to the effective date of transition and not be charged a registration fee. In those cases, registrants must insert the following statement as the first paragraph in the written notification previously mentioned: *“(insert company name) requests DDTC extend our registration expiration date to the effective date of transition to CCL for USML Category (insert Category number) items and waive the registration fee. (insert company name) certifies that no changes in our eligibility from what is represented in our previously submitted DS-2032 Statement of Registration has occurred (otherwise specify change in eligibility status).*

Registrants that avail themselves of the opportunity to continue using previously issued Department of State authorizations (licenses and agreements) for items that have transitioned to the CCL must maintain current registration with the Department of State, which includes payment of registration fees.

Request for Comments

DDTC requests public consideration and comment on the preceding transition plan, taking into account the following specific questions:

1. Is the transition plan clear and understandable? Is it logical?
2. Does the plan adequately address all regulated scenarios?
3. Will industry compliance with existing export control law be negatively affected by this plan?
4. Recognizing that this regulatory transition will unavoidably create challenges for industry, does the plan as presented effectively minimize these challenges?

5. Does the plan impose undue burden on industry, and if so, are there any suggestions that will help mitigate them?

June 14, 2012

(Date)

Rose E. Gottemoeller,
Acting Under Secretary,
Arms Control and International Security,
Department of State.

[FR Doc. 2012-15070 Filed 06/20/2012 at 8:45 am; Publication Date:
06/21/2012]